

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Aug 27 2026
SC Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2026-UP-405
Heard December 9, 2025 – Filed August 12, 2026

THE STATE,

RESPONDENT,

V.

TRAVONTAE J. MITCHELL,

APPELLANT

APPELLATE CASE NO. 2023-001323

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Petitioner, Travontae J. Mitchell, respectfully requests this Court grant rehearing as to Issues I and IV. On August 12, 2026, this Court issued an Opinion in which it affirmed Petitioner's convictions and sentences. *State v. Mitchell*, Op. No. 2026-UP-405 (S.C. Ct. App. filed August 12, 2026).

I.

The court erred in sentencing Petitioner to terms of imprisonment of forty-five and thirty years, where Petitioner was sixteen years old at the time of the offenses, but the court failed to give Petitioner's sentence individualized consideration and failed to consider the mitigating factors of youth required by *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Petitioner was sixteen years old at the time of the offenses. R. 20, ll. 13-14. His charges of murder and three counts of attempted murder were transferred from family court to general sessions court where he was tried with two codefendants, one aged eighteen at the time of the offenses (Che Ransom) and one aged seventeen at the time of the offenses (Don Brown). A third codefendant, Tronahz Whittington, the person who instigated the crime, had already been convicted and sentenced. Two additional codefendants (including Petitioner's older brother, aged nineteen) were charged and their charges were pending. R. 71, ll. 17-18; R. 80, ll. 16-19; R. 251, l. 18 – 253, l. 24; R. 304, l. 8; R. 273, ll. 23-25; R. 476, ll. 13-24; R. 70, ll. 22-24.

Upon conviction, defense counsel asked the court to sentence Petitioner in a manner commensurate with his youth and lessened culpability. Although counsel did not expressly cite *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) or *Miller v. Alabama*, 567 U.S. 460, 479 (2012), he did mention Petitioner's tender age and discussed adolescent brain development. R. 620, l. 23 – 621, l. 17. Petitioner's mother also addressed the court and spoke about Petitioner's character, interests, religion, and susceptibility to negative peer influences. R. 622, ll. 5-16. However, the court ruled there was no "justifiable reason" to sentence any of the three codefendants differently than the fourth already-sentenced codefendant, and it pronounced sentence simultaneously for all three codefendants: concurrent terms of forty-five years' imprisonment for murder and thirty years' imprisonment for each attempted murder. R. 626, ll. 1-11. At Petitioner's motion to reconsider sentencing, counsel again raised Petitioner's age and "juvenile" status. Tr. 631, l. 14 – 632, l. 13. The judge denied the motion, ruling that Petitioner "got the same sentence as the other co-defendants." R. 636, ll. 9-13. This Court held there was no error in sentencing, as a life without parole sentence was not imposed by the judge or requested by the prosecutor, and as Petitioner did not request an individualized sentencing

hearing or present the judge with relevant information to consider. *State v. Mitchell*, Op. No. 2026-UP-405 at 5 – 6 (S.C. Ct. App. filed August 12, 2026).

Respectfully, Petitioner submits that this Court overlooked and/or misapprehended his argument that he was entitled to individualized *consideration* of the mitigating factors of youth pursuant to *Jones v. State*, 440 S.C. 14, 889 S.E.2d 590 (2023), as he was a juvenile in adult court. Notably, the defendant in *Jones* (who was sixteen and seventeen when he committed the offenses) was only sentenced to concurrent ten- and fifteen-year periods of incarceration, yet the South Carolina Supreme Court held the sentencing judge “must” consider the mitigating factors of youth when sentencing Jones and other juveniles who are in general sessions court. *Jones*, 440 S.C. at 18, 889 S.E.2d at 593. Although the court may undertake such consideration during sentencing rather than at a separate *Aiken* hearing, it must undertake such consideration: it must consider that a defendant’s youth matters in issuing sentence. In expressly ruling there was no distinction between Petitioner, age 16, and the other codefendants, age 17 and 18, as well as Whittington, the sentencing court erred by failing to give Petitioner’s youth the consideration it was due prior to imposing sentence. Pursuant to *Jones*, Petitioner was entitled to consideration of the mitigating factors of youth. Although the court is not required to hold an *Aiken* hearing and may instead consider the mitigating factors of youth at a sentencing proceeding immediately following conviction, it must consider them before passing sentence. *Jones*, 440 S.C. at 25, 889 S.E.2d at 596.

Petitioner also respectfully submits that this Court overlooked and/or misapprehended his argument that he was additionally entitled to an individualized *hearing* on the mitigating factors of youth pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), because he faced the possibility of life without parole for one of the offenses. In *Aiken*, 410 S.C. at 545, 765 S.E.2d at

578, the South Carolina Supreme Court explained that the *Miller v. Alabama*, 567 U.S. 460, 479 (2012), factors apply “prospectively to all juvenile offenders who *may* be subject to a sentence of life imprisonment without the possibility of parole.” (emphasis added). The key is whether the juvenile faced life without parole, not whether he received it.

Further, Petitioner would highlight a point that this Court misapprehended or overlooked in concluding the sentence was proper as Petitioner “gave the trial court no relevant information to consider.” *State v. Mitchell*, Op. No. 2026-UP-405 at 6. Petitioner respectfully submits this Court has misapprehended or overlooked the application of *State v. Smart*, 439 S.C. 641, 645, 889 S.E.2d 573, 575 (2023), to this case, wherein the South Carolina Supreme Court held that neither party has a burden of proof or persuasion at an *Aiken* hearing. In *Smart*, the Court explained,

We now clarify that in an *Aiken* resentencing hearing—as with almost any other sentencing proceeding—there is no burden of proof or persuasion placed on either party and there is no presumption for or against any sentence. Instead, both the State and the defendant have a mutual burden *of production* to provide the resentencing court with any evidence and arguments they believe bear on the *Aiken* factors or otherwise relate to what should be the appropriate sentence.

State v. Smart, 439 S.C. at 645, 889 S.E.2d at 575 (footnote omitted) (emphasis in original). In accordance with *Smart*, the court did have produced for it relevant information to consider regarding the *Aiken* factors, from both parties. Petitioner produced relevant information for the court to consider as the court heard from defense counsel and Petitioner’s mother in mitigation at sentencing. The State and the defense both produced relevant information for the court to consider regarding the mitigating factors of youth as applied to Petitioner in the form of the information adduced at trial and during pretrial motions, through the parties’ witness examinations. For instance, the court heard information relevant to the mitigating factors of

youth during the *Jackson v. Denno*, 378 U.S. 368 (1964), hearing, and during witness testimony in the State's case in chief. These testimonies included information regarding and relevant to Petitioner's participation in the offenses, familial and peer pressures, youth-associated incompetencies, and more. Petitioner and the State produced "evidence and arguments they believe bear on the *Aiken* factors or otherwise relate to what should be the appropriate sentence." *Smart*, 439 S.C. at 645, 889 S.E.2d at 575. To the extent the court might have found it needed something more, it could have ordered a presentence evaluation be completed, directed the parties to produce for its review a copy of Petitioner's juvenile transfer evaluation, or otherwise requested additional information it found necessary to discharge its constitutional obligations regarding juvenile sentencing. *E.g.*, S.C. Code Ann. § 24-23-120 ("A Judge of the Court of General Sessions who has reason to believe a defendant suffers from a mental disorder, retardation, or substantial handicap, shall order a presentence investigation to be completed and submitted to the Court."); S.C. Code Ann. § 24-21-420 ("When directed by the court, the probation agent must fully investigate and report to the court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant including, whenever practicable, the findings of a physical and mental examination of the defendant."); *State v. Avery*, 333 S.C. 284, 293, 509 S.E.2d 476, 481 (1998) (family court did not err in transferring jurisdiction to general sessions court where "transfer order demonstrates a full investigation had been conducted and reflects consideration of the testimony from the transfer hearing and of the DJJ's Preadjudicatory Transfer Evaluation").

Next, while this Court denies Petitioner relief on this issue on direct appeal, this Court's decision effectively also denies Petitioner relief in post-conviction relief (PCR). The Opinion holds there was no error by the trial judge since defense counsel did not give the court anything

to consider, but the Opinion implies Petitioner was not entitled to consideration of the *Aiken* factors anyway since he did not receive life without parole. *State v. Mitchell*, Op. No. 2026-UP-405 at 3 – 6. While Petitioner maintains he was entitled to an individualized sentencing hearing since he faced the possibility of life without parole, if this Court is correct that he was not, Petitioner was still at least entitled to individualized consideration of the *Aiken* factors at a typical sentencing hearing pursuant to *Jones*, since he was a juvenile in adult court. Recall that *Jones* was entitled to such consideration even though *Jones* was only sentenced to ten- and fifteen-year terms. *Jones*, 440 S.C. at 18, 889 S.E.2d at 593. Unlike this case, in *Jones*, “the plea court properly considered the mitigating factors of youth and thoroughly explored Jones’s juvenility on the record.” *Id.*, 440 S.C. at 30, 889 S.E.2d at 599.

This Court noted that all of the codefendants “were teenagers at the time of the shooting.” *State v. Mitchell*, Op. No. 2026-UP-405 at 3, n. 2. However, Petitioner was sixteen and his older brother codefendant was nineteen. Other codefendants were seventeen and eighteen. “*Miller* extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen.” *Aiken v. Byars*, 410 S.C. at 537, 765 S.E.2d at 573. Although they all were teenagers, only those under eighteen are considered juveniles for Eighth Amendment purposes and are accorded special consideration under *Aiken* and *Miller*. The court’s ruling demonstrates it did not afford Petitioner this consideration: “Gentlemen, I don’t see any justifiable reason to sentence you to any more than the other codefendant who was found guilty. Likewise, I don’t see any justifiable reason to sentence you to any less than the codefendant.” R. 626, ll. 1-5. “[H]e got the same sentence as the other codefendants.” R. 636, ll. 12-13. The court’s failure to consider the hallmark features of youth prior to sentencing violated Petitioner’s constitutional protections from cruel and unusual

punishment. U.S. Const. amend. VIII; S.C. Const. art. I, § 15; *Miller v. Alabama*, 567 U.S. at 479; *Jones v. State*, 440 S.C. at 29, 889 S.E.2d at 598; *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 277.

This Court correctly recognized Petitioner's arguments do "carry some force." *State v. Mitchell*, Op. No. 2026-UP-405 at 5. Petitioner respectfully submits they carry constitutional force requiring correction by this Court. This Court should grant rehearing as to Issue I.

IV.

The court erred by admitting the statement of Petitioner's nontestifying codefendant, Che Ransom, since the hearsay violated Petitioner's Confrontation Clause rights and *Bruton v. United States*, 391 U.S. 123 (1968), and its progeny.

The defense moved in limine that statements made by the non-testifying codefendants were inadmissible in the joint trial pursuant to *Bruton v. United States*, 391 U.S. 123 (1968), *Crawford v. Washington*, 541 U.S. 36 (2004), and as hearsay. R. 56, l. 14 – 60, l. 3; R. 287, l. 8 – 293, l. 3. The defense argued the statements would necessarily implicate the codefendants. The prosecutor stated she would introduce the statements through testimony from law enforcement about the interviews, rather than through written statements. The court ruled that the statements were admissible and stated that the prosecution would not violate *Bruton*. R. 287, l. 17 – 292, l. 23.

When Detective Edwards was called to testify about his interrogation of codefendant Che Ransom, Petitioner objected to the admission of the testimony, since Petitioner was unable to cross-examine Ransom, who was exercising his right to remain silent at trial. "[H]earsay and also our previous objection pursuant to *Crawford* and *Bruton*, Your Honor, involving the other non-testifying codefendants in this case." The court permitted the testimony. R. 361, ll. 18-22.

Detective Edwards interviewed Ransom ten days after the murder. R. 637; R. 42, ll. 11-12.

Detective Edwards testified as follows, regarding his interview of Che Ransom.

Q Now, did he tell you whether or not there was a plan?

A Yes.

Q What did he tell you was the plan?

A He said he knew the victim in this case from Snapchat and **they had**—he had saw that he had weed money, and a plan was formulated to rob him for money and/or weed.

Q So he told you he had a plan?

A Yep.

...

Q All right. Well, you talked about this plan to rob. Was the—who originated this supposed plan to rob Jamie?

A I believe he said Tronahz Whittington.

Q So he told you Tronahz wanted to rob Jamie; correct?

A Yes.

Q Okay. **And that plan originated after they were already in the car;** correct?

A Yes.

...

Q Detective Edwards, Mr. Bouchette, do you remember, asked you about when the plan originated; correct?

A Yes, ma'am.

Q **And he asked you if the plan came about while they were in the car?**

A Yes, ma'am.

Q And is that when the plan came about?

A To the best of my knowledge, I believe so.

Q And you told Mr. Bouchette, correct, that's when the plan came about?

A Yes.

Q And that's what Che Ransom told you?

A Yes. That's what he told me.

Q So the question wasn't if there was a plan; correct?

A Right.

Q Just when the plan originated?

A Yes ma'am.

Q And the answer was, **when they were in the car?**

A Yes, ma'am.

R. 368, ll. 8-17; R. 373, ll. 1-8; R. 374, l. 21 – 375, l. 14 (emphasis added).

This Court held there was “no *Bruton* violation” as “context” indicated the testimony only implicated Whittington and Ransom in the planning. *State v. Mitchell*, Op. No. 2026-UP-405 at 12. Because this Court concluded the testimony did not implicate Petitioner but occurred after everyone had gotten in the car, this Court found the testimony “bolstered” Petitioner’s claim that he was not part of any advanced plan to rob Johnson and was merely ‘in the wrong place at the wrong time.’” *State v. Mitchell*, Op. No. 2026-UP-405 at 12 (footnote omitted).

Petitioner respectfully submits this Court overlooked his argument that the solicitor’s use of the evidence in closing, when she argued to the jury that: “they were going to rob him” was “evidence of them stalking behind him [], with four guns in the car”, demonstrated the solicitor thought the testimony implicated Petitioner and the other defendants. R. 544, ll. 4-20. Therefore, it did not bolster his wrong place, wrong time argument and was instead incriminating. Additionally, a question from the jury indicated the jurors thought the testimony

implicated all the defendants. The jury sent a note during deliberations which stated: “When did *the defendants* watch the Snapchat? Date? Time?” R. 788, ll. 13-17 (emphasis added). The solicitor noted this question was in response to Edwards’ testimony (about the plan arising when “they” saw on Snapchat that the victim “had weed money”). R. 610, ll. 8-11. As seen, in response to the solicitor’s question: “What did he [Ransom] tell you was the plan?”, Edwards testified: He [Ransom] said he knew the victim in this case from Snapchat and **they had**—he had saw that he had weed money, and a plan was formulated to rob him for money and/or weed.” R. 368, ll. 11-15. “They” came up again several times during this witness’s testimony. R. 374, l. 21 – 375, l. 14; R.373, ll. 1-17. The note indicates the jury took the testimony to mean that “they” referred to “the defendants.” Whittington was not a defendant in this case, and the jury used “defendants” plural. Additionally, one does not ordinarily refer to oneself as “they.”

This testimony impermissibly referred to the existence of Petitioner, the non-confessing codefendant. Petitioner had the right to confront and cross-examine the witnesses against him. *Richardson v. Marsh*, 481 U.S. 200, 206 (1987); *Pointer v. Texas*, 380 U.S. 400, 401 (1965). “In *Bruton v. United States*, the United States Supreme Court held that a defendant’s Confrontation Clause rights are violated when a nontestifying codefendant’s confession that implicates the defendant is admitted during a joint trial.” *State v. McDonald*, 412 S.C. 133, 139, 771 S.E.2d 840, 843 (2015) (citing *Bruton v. United States*, 391 U.S. at 127-28). “Ordinarily, a witness whose testimony is introduced at a joint trial is not considered to be a witness ‘against’ a defendant if the jury is instructed to consider that testimony only against a codefendant.” *Richardson v. Marsh*, 481 U.S. at 206. However, “there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be

ignored.” *Bruton*, 391 U.S. at 135. “Such a context is presented [] where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect[.]” *Id.*, 391 U.S. at 135-36. However, with a proper limiting instruction, when a nontestifying codefendant’s confession does not incriminate the defendant because it has been redacted to eliminate “not only the defendant’s name, but any reference to his or her existence,” the Confrontation Clause is satisfied. *Richardson v. Marsh*, 481 U.S. at 211.

A confession may not refer directly to the existence of the nonconfessing defendant. *Gray v. Maryland*, 523 U.S. 185, 192 (1998). Thus, inserting a blank space or using the word “deleted” or a similar symbol is improper. *Id.*, 523 U.S. at 193. *Bruton* prohibits “those confessions which facially incriminate through inference.” *State v. Henson*, 407 S.C. 154, 164, 754 S.E.2d 508, 513 (2014). “[E]ven a confession redacted through the use of neutral pronouns violates the Confrontation Clause if it facially incriminates a nonconfessing codefendant.” *Id.* (citing *State v. Holder*, 382 S.C. 278, 676 S.E.2d 690 (2009)).

Ransom’s confession implicated Petitioner. Edwards testified Ransom told him the plan came up when “they” saw Decedent had “weed money” on Snapchat. Edwards stated Ransom told him the plan came about while “they” were in the car. Petitioner was in the car with the other codefendants and this was a hand of one, hand of all case and a joint trial. Ransom’s statement “they” came up with a plan in the car referred to the other occupants of the car, which included Petitioner. The solicitor argued Ransom’s statement implicated all the defendants in closing. “They” in this case was akin to the impermissible “she” in *State v. Holder*, 382 S.C. at 283, 676 S.E.2d at 693; “deleted” in *Gray v. Maryland*, 523 U.S. at 192; and “the guy,” “he,”

and “him” in *State v. Henson*, 407 S.C. at 158, 754 S.E.2d at 510. The testimony violated Petitioner’s Confrontation Clause rights pursuant to *Bruton*. He was not allowed to cross-examine Ransom, and Ransom’s statement incriminated him.¹

Because of the failure to comply with *Bruton*’s limitations on the admissibility of this type of evidence, the evidence was testimonial hearsay. Ransom confessed while being interrogated by Detective Edwards ten days after the murder. *See Crawford v. Washington*, 541 U.S. 36, 52-59 (2004) (Testimonial statements of witnesses absent from trial are admissible only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine the declarant.); *Davis v. Washington*, 547 U.S. 813, 822 (2006) (Statements are testimonial when “the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.”). “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. A statement is not hearsay if: “The statement is offered against a party and is (A) the party’s own statement . . .” Rule 801(d)(2), SCRE. “Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.” Rule 802, SCRE. Because Ransom’s confession did not comply with *Bruton* in that it impermissibly implicated Petitioner, the statement was not “offered against” only Ransom—it was also “offered against” Petitioner within the meaning of

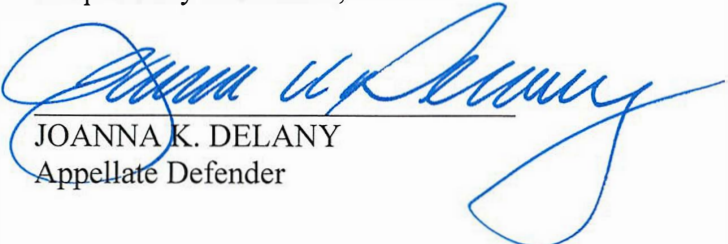
¹ Even if it had not incriminated Petitioner, there still would have been a Confrontation Clause violation since the jury was not instructed to consider Detective Edwards’s testimony about Che Ransom’s statement only against Ransom. “Ordinarily, a witness whose testimony is introduced at a joint trial is not considered to be a witness ‘against’ a defendant *if* the jury is instructed to consider that testimony only against a codefendant.” *Richardson v. Marsh*, 481 U.S. at 206 (emphasis added). *See Samia v. United States*, 599 U.S. 635, 648 (2023) (introduction of codefendant’s altered confession coupled with a limiting instruction did not violate the Confrontation Clause).

the evidentiary rules, but it was not Appellant's own statement. In addition to violating Petitioner's confrontation rights, the admission of this evidence was hearsay. Rule 802, SCRE.

The error requires reversal. "Violations of the Confrontation Clause are subject to a harmless error analysis." *State v. Holder*, 382 S.C. at 285, 676 S.E.2d at 694. Where there is overwhelming evidence of guilt a *Bruton* violation is harmless beyond a reasonable doubt. *State v. McDonald*, 412 S.C. at 143, 771 S.E.2d at 845 (citing *Schneble v. Florida*, 405 U.S. 427, 430 (1972)). All the State established conclusively was that Petitioner was in the car. The jury keyed in on the testimony "they" had a plan, as evidenced by its question. Only three or four out of six people in the car got out and shot. R. 218, ll. 8-9. None of the complainants identified Petitioner. The only person who stated Petitioner shot was codefendant/State's witness McLeod, who had a noticeable mole under his eye but claimed he never got out of the car. R. 467, ll. 15-22; R. 503, l. 14 – 504, l. 2. Yet, one of the complainants testified one of the shooters had a distinctive mole under his eye. R. 193, l. 5 – 199, l. 19. Shamontae Graham testified there was no plan. R. 273, ll. 8-13. The only evidence there was a plan was this testimony. This error was not harmless. Petitioner respectfully submits this Court should grant rehearing as to Issue IV.

Respectfully, rehearing should be granted to Petitioner Travontae Mitchell as to Issues I and IV.

Respectfully Submitted,



JOANNA K. DELANY
Appellate Defender

This 27th day of August, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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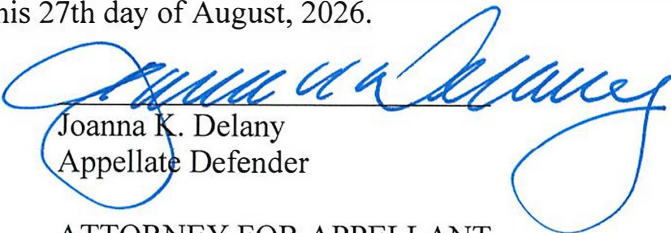
TRAVONTAE J. MITCHELL,

APPELLANT

APPELLATE CASE NO. 2023-001323

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Travontae J. Mitchell, #391074, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 27th day of August, 2026.


Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

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2023-001323 The State v. Travontae J. Mitchell

Aug 27 2026

SC Court of Appeals

From Walkup, Catherine <walkup@scid.sc.gov>

Date Thu 8/27/2026 4:30 PM

To tommyevansjr@scag.gov <tommyevansjr@scag.gov>

Cc Delany, Joanna <jdelany@scid.sc.gov>; brandyrankin@scag.gov <brandyrankin@scag.gov>

 2 attachments (904 KB)

2023-001323 The State v. Travontae J. Mitchell Petition for Rehearing.pdf; 2023-001323 The State v. Travontae J. Mitchell Petition for Rehearing Attorney General Letter.pdf;

Good afternoon,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today August 27th with the Court of Appeals via email filing.

Respectfully,

Catherine Walkup, Administrative Assistant